

AMENDED IN SENATE JUNE 28, 2007

AMENDED IN SENATE JUNE 11, 2007

AMENDED IN SENATE MAY 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 310**

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**Introduced by Assembly Member Silva**

February 9, 2007

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An act to amend Section 21710 of the Business and Professions Code, to amend Section 3154 of the Civil Code, to amend Sections 12a, 222, 396a, 585, 618, 644, 904, 990, 1011, 1015, 1169, and 1986 of the Code of Civil Procedure, to amend Sections 16701, 16701.5, and 16914 of the Corporations Code, to amend Section 17595 of, and to repeal Sections 43040.5 and 43060 of, the Education Code, to amend Sections 8610.13 and 12003.5 of, and to repeal Sections 8610.7 and 8610.8 of, the Fish and Game Code, to amend Sections 7910 and 26801 of the Government Code, to amend Sections 1196, 1207, 1213, and 1326 of the Penal Code, and to amend Sections 1803.3, 23140, and 23229.1 of the Vehicle Code, relating to the maintenance of the codes.

### LEGISLATIVE COUNSEL'S DIGEST

AB 310, as amended, Silva. Maintenance of the codes.

Existing law establishes the California Law Revision Commission. Existing law authorizes the commission to recommend changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law and bring the law into harmony with modern conditions. Existing law requires the commission to file a report at each regular session of the Legislature containing a calendar of topics selected by the commission for study, which is subject to approval by concurrent

resolution of the Legislature. Existing law authorizes the commission to recommend revisions to correct technical or minor defects in the statutes without the prior concurrent resolution of the Legislature referring the matter to it for study.

This bill would make technical and minor changes in various provisions of the law to effectuate the recommendations of the commission.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 21710 of the Business and Professions  
2     Code is amended to read:  
3     21710. If a declaration in opposition to the lien sale is received  
4     prior to the date set forth in the notice of lien sale, the owner may  
5     enforce the lien as follows:  
6     (a) An action to enforce the owner's lien shall be commenced  
7     by the filing of a verified complaint setting forth the facts upon  
8     which the claim of lien is based. The summons and complaint may  
9     be served by certified mail, postage prepaid, addressed to the  
10    occupant at the occupant's last known address, in which case  
11    service shall be deemed completed on the fifth day after the  
12    mailing, or in any other manner authorized by Chapter 4  
13    (commencing with Section 413.10) of Title 2 of Part 2 of the Code  
14    of Civil Procedure.  
15    (b) The occupant shall have 10 days in which to respond to the  
16    complaint after service of the summons is completed, which time  
17    may be extended for good cause shown.  
18    (c) If the occupant has not responded to the complaint by answer  
19    or demurrer within the time allowed after service is completed,  
20    the clerk, upon application of the owner, shall enter the default of  
21    the occupant, and thereafter, the owner may apply to the court for  
22    judgment in the amount of the lien, including costs.  
23    (d) Any judgment entered on the action on the lien in favor of  
24    the owner may be enforced by sale of the property by the owner.  
25    The sale shall be conducted in a commercially reasonable manner,  
26    and shall take place 10 days or more from the entry of judgment,  
27    unless within that time period, or at any time prior to the sale, the  
28    occupant pays to the owner the full amount of the judgment.

1 (e) Enforcement of the judgment may be stayed, pending appeal,  
2 by the posting of a bond by the occupant in an amount one and  
3 one-half times the amount of the judgment, in which case the  
4 property may be released to the occupant.

5 SEC. 2. Section 3154 of the Civil Code is amended to read:

6 3154. (a) At any time after the expiration of the time period  
7 specified by Section 3144 with regard to the period during which  
8 property is bound by a lien after recordation of a claim of lien,  
9 where no action has been brought to enforce that lien, the owner  
10 of the property or the owner of any interest therein may petition  
11 the proper court for a decree to release the property from the lien.

12 (b) The petition shall be verified and shall allege all of the  
13 following:

14 (1) The date of recordation of the claim of lien.

15 (2) The legal description of the property affected by the claim  
16 of lien.

17 (3) That no action to foreclose the lien is pending, or that no  
18 extension of credit has been recorded, and that the time period  
19 during which suit can be brought to foreclose the lien has expired.

20 (4) That the lien claimant is unable or unwilling to execute a  
21 release of the lien or cannot with reasonable diligence be found.

22 (5) That the owner of the property or interest in the property  
23 has not filed for relief under any law governing bankruptcy, and  
24 that there exists no other restraint to prevent the lien claimant from  
25 filing to foreclose the lien. A certified copy of the claim of lien  
26 shall be attached to the petition. The petition shall be deemed  
27 controverted by the lien claimant.

28 (c) Upon the filing of the petition, and before any further  
29 proceedings are had, the clerk shall set a date for the hearing not  
30 more than 30 days following the filing of the petition. The court  
31 may continue the hearing beyond the 30-day period, but good  
32 cause shall be shown for any continuance.

33 (d) A copy of the petition and the notice setting the date for the  
34 hearing shall be served upon the lien claimant at least 10 days prior  
35 to the date set for hearing, in the manner in which a summons is  
36 required to be served, or by certified or registered mail, postage  
37 prepaid, return receipt requested, addressed to the lien claimant at  
38 the claimant's address as shown in any of the following:

39 (1) The preliminary 20-day notice served by the claimant  
40 pursuant to Section 3097.

1 (2) The records of the registrar of contractors.

2 (3) The contract on which the lien is based.

3 (4) The claim of lien itself.

4 (e) When service is made by mail as provided in this section,  
5 service is complete on the fifth day following the day of the deposit  
6 of the mail. No decree shall issue in favor of the petitioner unless  
7 the petitioner proves that service of the petition and the order fixing  
8 the date for hearing was made in compliance with this subdivision.  
9 The issue of compliance with this subdivision shall be deemed  
10 controverted by the lien claimant.

11 (f) In the event judgment is rendered in favor of the petitioner,  
12 the decree shall indicate all of the following:

13 (1) The date the lien was recorded.

14 (2) The county and city, if any, in which the lien was recorded.

15 (3) The book and page of the place in the official records where  
16 the lien is recorded.

17 (4) The legal description of the property affected. Upon the  
18 recordation of a certified copy of the decree, the property described  
19 in the decree shall be released from the lien.

20 (g) The prevailing party shall be entitled to attorneys' fees not  
21 to exceed two thousand dollars (\$2,000).

22 (h) Nothing in this section shall be construed to bar any other  
23 cause of action or claim for relief by the owner of the property or  
24 an interest in the property, nor shall a decree canceling a claimant's  
25 lien bar the lien claimant from bringing any other cause of action  
26 or claim for relief, other than an action foreclosing the lien.  
27 However, no other action or claim shall be joined with the claim  
28 for relief established by this section.

29 (i) Chapter 2.5 (commencing with Section 1141.10) of Title 3  
30 of Part 3 of the Code of Civil Procedure does not apply to causes  
31 commenced pursuant to this section.

32 SEC. 3. Section 12a of the Code of Civil Procedure is amended  
33 to read:

34 12a. (a) If the last day for the performance of any act provided  
35 or required by law to be performed within a specified period of  
36 time is a holiday, then that period is hereby extended to and  
37 including the next day that is not a holiday. For purposes of this  
38 section, "holiday" means all day on Saturdays, all holidays  
39 specified in Section 135 and, to the extent provided in Section 12b,

1 all days that by terms of Section 12b are required to be considered  
2 as holidays.

3 (b) This section applies to all provisions of law providing or  
4 requiring an act to be performed on a particular day or within a  
5 specified period of time, whether expressed in this or any other  
6 code or statute, ordinance, rule, or regulation.

7 SEC. 4. Section 222 of the Code of Civil Procedure is amended  
8 to read:

9 222. (a) Except as provided in subdivision (b), when an action  
10 is called for trial by jury, the clerk shall randomly select the names  
11 of the jurors for voir dire, until the jury is selected or the panel is  
12 exhausted.

13 (b) When the jury commissioner has provided the court with a  
14 listing of the trial jury panel in random order, the court shall seat  
15 prospective jurors for voir dire in the order provided by the panel  
16 list.

17 SEC. 5. Section 396a of the Code of Civil Procedure is  
18 amended to read:

19 396a. In a case that is subject to Sections 1812.10 and 2984.4  
20 of the Civil Code, or subdivision (b) of Section 395 of the Code  
21 of Civil Procedure, or in an action or proceeding for an unlawful  
22 detainer as defined in Section 1161 of the Code of Civil Procedure:

23 (a) The plaintiff shall state facts in the complaint, verified by  
24 the plaintiff's oath, or the oath of the plaintiff's attorney, or in an  
25 affidavit of the plaintiff or of the plaintiff's attorney filed with the  
26 complaint, showing that the action has been commenced in the  
27 proper superior court and the proper court location for the trial of  
28 the action or proceeding, and showing that the action is subject to  
29 the provisions of Sections 1812.10 and 2984.4 of the Civil Code  
30 or subdivision (b) of Section 395 of the Code of Civil Procedure,  
31 or is an action for an unlawful detainer. When the affidavit is filed  
32 with the complaint, a copy thereof shall be served with the  
33 summons. Except as provided in this section, if the complaint or  
34 affidavit is not filed pursuant to this subdivision, no further  
35 proceedings may occur in the action or proceeding, except to  
36 dismiss the action or proceeding without prejudice. However, the  
37 court may, on terms that are just, permit the affidavit to be filed  
38 after the filing of the complaint, and a copy of the affidavit shall  
39 be served on the defendant and the time to answer or otherwise  
40 plead shall date from that service.

(b) If it appears from the complaint or affidavit, or otherwise, that the superior court or court location where the action or proceeding is commenced is not the proper court or court location for the trial, the court where the action or proceeding is commenced, or a judge thereof, shall, whenever that fact appears, transfer it to the proper court or court location, on its own motion, or on motion of the defendant, unless the defendant consents in writing, or in open court (consent in open court being entered in the minutes of the court), to the keeping of the action or proceeding in the court or court location where commenced. If that consent is given, the action or proceeding may continue in the court or court location where commenced. Notwithstanding Section 1801.1 and subdivision (f) of Section 2983.7 of the Civil Code, that consent may be given by a defendant who is represented by counsel at the time the consent is given, and if an action or proceeding is subject to subdivision (b) of Section 395 or is for an unlawful detainer, that consent may only be given by a defendant who is represented by counsel at the time the consent is given.

(c) In any case where the transfer of the action or proceeding is ordered under subdivision (a) or (b), if summons is served prior to the filing of the action or proceeding in the superior court or court location to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of the filing.

(d) If it appears from the complaint or affidavit of the plaintiff that the superior court and court location where the action or proceeding is commenced are a proper court and court location for the trial thereof, all proper proceedings may be had, and the action or proceeding may be tried in that court at that location.

(e) A motion for a transfer of the action or proceeding to a different superior court may be made as in other cases, within the time, upon the grounds, and in the manner provided in this title, and if upon that motion it appears that the action or proceeding is not pending in the proper court, or should for other cause be transferred, the action or proceeding shall be ordered transferred as provided in this title.

If any action or proceeding is ordered transferred to another court as provided in this section, proceedings shall be had, and the costs and fees shall be paid, as provided in Sections 398 and 399.

1 (f) If a motion is made for transfer of an action or proceeding  
2 to a different court location within the same superior court as  
3 provided in this section, proceedings shall be had as provided by  
4 local rules of the superior court.

5 SEC. 6. Section 585 of the Code of Civil Procedure is amended  
6 to read:

7 585. Judgment may be had, if the defendant fails to answer the  
8 complaint, as follows:

9 (a) In an action arising upon contract or judgment for the  
10 recovery of money or damages only, if the defendant has, or if  
11 more than one defendant, if any of the defendants have, been  
12 served, other than by publication, and no answer, demurrer, notice  
13 of motion to strike of the character specified in subdivision (f),  
14 notice of motion to transfer pursuant to Section 396b, notice of  
15 motion to dismiss pursuant to Article 2 (commencing with Section  
16 583.210) of Chapter 1.5 of Title 8, notice of motion to quash  
17 service of summons or to stay or dismiss the action pursuant to  
18 Section 418.10, or notice of the filing of a petition for writ of  
19 mandate as provided in Section 418.10 has been filed with the  
20 clerk of the court within the time specified in the summons, or  
21 within further time as may be allowed, the clerk, upon written  
22 application of the plaintiff, and proof of the service of summons,  
23 shall enter the default of the defendant or defendants, so served,  
24 and immediately thereafter enter judgment for the principal amount  
25 demanded in the complaint, in the statement required by Section  
26 425.11, or in the statement provided for in Section 425.115, or a  
27 lesser amount if credit has been acknowledged, together with  
28 interest allowed by law or in accordance with the terms of the  
29 contract, and the costs against the defendant, or defendants, or  
30 against one or more of the defendants. If, by rule of court, a  
31 schedule of attorneys' fees to be allowed has been adopted, the  
32 clerk may include in the judgment attorneys' fees in accordance  
33 with the schedule (1) if the contract provides that attorneys' fees  
34 shall be allowed in the event of an action thereon, or (2) if the  
35 action is one in which the plaintiff is entitled by statute to recover  
36 attorneys' fees in addition to money or damages. The plaintiff shall  
37 file a written request at the time of application for entry of the  
38 default of the defendant or defendants, to have attorneys' fees fixed  
39 by the court, whereupon, after the entry of the default, the court  
40 shall hear the application for determination of the attorneys' fees

1 and shall render judgment for the attorneys' fees and for the other  
2 relief demanded in the complaint, in the statement required by  
3 Section 425.11, or in the statement provided for in Section 425.115,  
4 or a lesser amount if credit has been acknowledged, and the costs  
5 against the defendant, or defendants, or against one or more of the  
6 defendants.

7 (b) In other actions, if the defendant has been served, other than  
8 by publication, and no answer, demurrer, notice of motion to  
9 ~~strike~~*of strike* of the character specified in subdivision (f), notice  
10 of motion to transfer pursuant to Section 396b, notice of motion  
11 to dismiss pursuant to Article 2 (commencing with Section  
12 583.210) of Chapter 1.5 of Title 8, notice of motion to quash  
13 service of summons or to stay or dismiss the action pursuant to  
14 Section 418.10 or notice of the filing of a petition for writ of  
15 mandate as provided in Section 418.10 has been filed with the  
16 clerk of the court within the time specified in the summons, or  
17 within further time as may be allowed, the clerk, upon written  
18 application of the plaintiff, shall enter the default of the defendant.  
19 The plaintiff thereafter may apply to the court for the relief  
20 demanded in the complaint. The court shall hear the evidence  
21 offered by the plaintiff, and shall render judgment ~~in the~~ *in the*  
22 plaintiff's favor for that relief, not exceeding the amount stated in  
23 the complaint, in the statement required by Section 425.11, or in  
24 the statement provided for by Section 425.115, as appears by the  
25 evidence to be just. If the taking of an account, or the proof of any  
26 fact, is necessary to enable the court to give judgment or to carry  
27 the judgment into effect, the court may take the account or hear  
28 the proof, or may, in its discretion, order a reference for that  
29 purpose. If the action is for the recovery of damages, in whole or  
30 in part, the court may order the damages to be assessed by a jury  
31 or if, to determine the amount of damages, the examination of a  
32 long account is involved, by a reference as above provided.

33 (c) In all actions where the service of the summons was by  
34 publication, upon the expiration of the time for answering, and  
35 upon proof of the publication and that no answer, demurrer, notice  
36 of motion to ~~strike~~*of strike* of the character specified in subdivision  
37 (f), notice of motion to transfer pursuant to Section 396b, notice  
38 of motion to dismiss pursuant to Article 2 (commencing with  
39 Section 583.210) of Chapter 1.5 of Title 8, notice of motion to  
40 quash service of summons or to stay or dismiss the action pursuant



1 to Section 418.10, or notice of the filing of a petition for writ of  
2 mandate as provided in Section 418.10 has been filed, the clerk,  
3 upon written application of the plaintiff, shall enter the default of  
4 the defendant. The plaintiff thereafter may apply to the court for  
5 the relief demanded in the complaint; and the court shall hear the  
6 evidence offered by the plaintiff, and shall render judgment in the  
7 plaintiff's favor for that relief, not exceeding the amount stated in  
8 the complaint, in the statement required by Section 425.11, or in  
9 the statement provided for in Section 425.115, as appears by the  
10 evidence to be just. If the defendant is not a resident of the state,  
11 the court shall require the plaintiff, or the plaintiff's agent, to be  
12 examined, on oath, respecting any payments that have been made  
13 to the plaintiff, or to anyone for the plaintiff's use, on account of  
14 any demand mentioned in the complaint, in the statement required  
15 by Section 425.11, or in the statement provided for in Section  
16 425.115, and may render judgment for the amount that the plaintiff  
17 is entitled to recover. In all cases affecting the title to or possession  
18 of real property, where the service of the summons was by  
19 publication and the defendant has failed to answer, no judgment  
20 shall be rendered upon proof of mere occupancy, unless the  
21 occupancy has continued for the time and has been of the character  
22 necessary to confer title by prescription. In all cases where the  
23 plaintiff bases a claim upon a paper title, the court shall require  
24 evidence establishing *the* plaintiff's equitable right to judgment  
25 before rendering judgment. In actions involving only the possession  
26 of real property where the complaint is verified and shows by  
27 proper allegations that no party to the action claims title to the real  
28 property involved, either by prescription, accession, transfer, will,  
29 or succession, but only the possession thereof, the court may render  
30 judgment upon proof of occupancy by plaintiff and ouster by  
31 defendant.

32 (d) In the cases referred to in subdivisions (b) and (c), or upon  
33 an application to have attorneys' fees fixed by the court pursuant  
34 to subdivision (a), the court in its discretion may permit the use of  
35 affidavits, in lieu of personal testimony, as to all or any part of the  
36 evidence or proof required or permitted to be offered, received, or  
37 heard in those cases. The facts stated in the affidavit or affidavits  
38 shall be within the personal knowledge of the affiant and shall be  
39 set forth with particularity, and each affidavit shall show

1 affirmatively that the affiant, if sworn as a witness, can testify  
2 competently thereto.

3 (e) If a defendant files a cross-complaint against another  
4 defendant or the plaintiff, a default may be entered against that  
5 party on that cross-complaint if the plaintiff or that cross-defendant  
6 has been served with that cross-complaint and has failed to file an  
7 answer, demurrer, notice of motion to strike of the character  
8 specified in subdivision (f), notice of motion to transfer pursuant  
9 to Section 396b, notice of motion to dismiss pursuant to Article 2  
10 (commencing with Section 583.210) of Chapter 1.5 of Title 8,  
11 notice of motion to quash service of summons or to stay or dismiss  
12 the action pursuant to Section 418.10, or notice of the filing of a  
13 petition for a writ of mandate as provided in Section 418.10 within  
14 the time specified in the summons, or within a time as may be  
15 allowed. However, no judgment may separately be entered on that  
16 cross-complaint unless a separate judgment may, in fact, be  
17 properly awarded on that cross-complaint and the court finds that  
18 a separate judgment on that cross-complaint would not substantially  
19 delay the final disposition of the action between the parties.

20 (f) A notice of motion to strike within the meaning of this section  
21 is a notice of motion to strike the whole or any part of a pleading  
22 filed within the time which the moving party is required otherwise  
23 to plead to that pleading. The notice of motion to strike shall  
24 specify a hearing date set in accordance with Section 1005. The  
25 filing of a notice of motion does not extend the time within which  
26 to demur.

27 SEC. 7. Section 618 of the Code of Civil Procedure is amended  
28 to read:

29 618. When the jury, or three-fourths of them, have agreed upon  
30 a verdict, they must be conducted into court and the verdict  
31 rendered by their foreperson. The verdict must be in writing, signed  
32 by the foreperson, and must be read to the jury by the clerk, and  
33 the inquiry made whether it is their verdict. Either party may  
34 require the jury to be polled, which is done by the court or clerk,  
35 asking each juror if it is the juror's verdict. If upon inquiry or  
36 polling, more than one-fourth of the jurors disagree thereto, the  
37 jury must be sent out again, but if no disagreement is expressed,  
38 the verdict is complete and the jury discharged from the case.

39 SEC. 8. Section 644 of the Code of Civil Procedure is amended  
40 to read:

1     644. (a) In the case of a consensual general reference pursuant  
2 to Section 638, the decision of the referee or commissioner upon  
3 the whole issue must stand as the decision of the court, and upon  
4 filing of the statement of decision with the clerk of the court,  
5 judgment may be entered thereon in the same manner as if the  
6 action had been tried by the court.

7     (b) In the case of all other references, the decision of the referee  
8 or commissioner is only advisory. The court may adopt the  
9 referee's recommendations, in whole or in part, after independently  
10 considering the referee's findings and any objections and responses  
11 thereto filed with the court.

12     SEC. 9. Section 904 of the Code of Civil Procedure is amended  
13 to read:

14     904. An appeal may be taken in a civil action or proceeding  
15 as provided in Sections 904.1, 904.2, and 904.5.

16     SEC. 9.5. *Section 904 of the Code of Civil Procedure is*  
17 *amended to read:*

18     904. An appeal may be taken in a civil action or proceeding  
19 as provided in Sections 904.1, 904.2, 904.3, ~~904.4~~ and 904.5.

20     SEC. 10. Section 990 of the Code of Civil Procedure is  
21 amended to read:

22     990. The summons specified in Section 989 shall be issued by  
23 the clerk upon presentation of the affidavit specified in Section  
24 991. The summons must describe the judgment, and require the  
25 person summoned to show cause why the person should not be  
26 bound by it, and must be served in the same manner, and returnable  
27 no later than ninety (90) days after the time specified for the return  
28 of the original summons. It is not necessary to file a new complaint.

29     SEC. 11. Section 1011 of the Code of Civil Procedure is  
30 amended to read:

31     1011. The service may be personal, by delivery to the party or  
32 attorney on whom the service is required to be made, or it may be  
33 as follows:

34     (a) If upon an attorney, service may be made at the attorney's  
35 office, by leaving the notice or other papers in an envelope or  
36 package clearly labeled to identify the attorney being served, with  
37 a receptionist or with a person having charge thereof. When there  
38 is no person in the office with whom the notice or papers may be  
39 left for purposes of this subdivision at the time service is to be  
40 effected, service may be made by leaving them between the hours

1 of nine in the morning and five in the afternoon, in a conspicuous  
2 place in the office, or, if the attorney's office is not open so as to  
3 admit of that service, then service may be made by leaving the  
4 notice or papers at the attorney's residence, with some person of  
5 not less than 18 years of age, if the attorney's residence is in the  
6 same county with his or her office, and, if the attorney's residence  
7 is not known or is not in the same county with his or her office,  
8 or being in the same county it is not open, or a person 18 years of  
9 age or older cannot be found at the attorney's residence, then  
10 service may be made by putting the notice or papers, enclosed in  
11 a sealed envelope, into the post office or a mail box, subpost office,  
12 substation, or mail chute or other like facility regularly maintained  
13 by the Government of the United States directed to the attorney at  
14 his or her office, if known and otherwise to the attorney's residence,  
15 if known. If neither the attorney's office nor residence is known,  
16 service may be made by delivering the notice or papers to the  
17 address of the attorney or party of record as designated on the court  
18 papers, or by delivering the notice or papers to the clerk of the  
19 court, for the attorney.

20 (b) If upon a party, service shall be made in the manner  
21 specifically provided in particular cases, or, if no specific provision  
22 is made, service may be made by leaving the notice or other paper  
23 at the party's residence, between the hours of eight in the morning  
24 and six in the evening, with some person of not less than 18 years  
25 of age. If at the time of attempted service between those hours a  
26 person 18 years of age or older cannot be found at the party's  
27 residence, the notice or papers may be served by mail. If the party's  
28 residence is not known, then service may be made by delivering  
29 the notice or papers to the clerk of the court, for that party.

30 SEC. 12. Section 1015 of the Code of Civil Procedure is  
31 amended to read:

32 1015. When a plaintiff or a defendant, who has appeared,  
33 resides out of the state, and has no attorney in the action or  
34 proceeding, the service may be made on the clerk of the court, for  
35 that party. But in all cases where a party has an attorney in the  
36 action or proceeding, the service of papers, when required, must  
37 be upon the attorney instead of the party, except service of  
38 subpoenas, of writs, and other process issued in the suit, and of  
39 papers to bring the party into contempt. If the sole attorney for a  
40 party is removed or suspended from practice, then the party has

1 no attorney within the meaning of this section. If the party's sole  
2 attorney has no known office in this state, notices and papers may  
3 be served by leaving a copy thereof with the clerk of the court,  
4 unless the attorney has filed in the cause an address of a place at  
5 which notices and papers may be served on the attorney, in which  
6 event they may be served at that place.

7 SEC. 13. Section 1169 of the Code of Civil Procedure is  
8 amended to read:

9 1169. If, at the time appointed, any defendant served with a  
10 summons does not appear and defend, the clerk, upon written  
11 application of the plaintiff and proof of the service of summons  
12 and complaint, shall enter the default of any defendant so served,  
13 and, if requested by the plaintiff, immediately shall enter judgment  
14 for restitution of the premises and shall issue a writ of execution  
15 thereon. The application for default judgment and the default  
16 judgment shall include a place to indicate that the judgment  
17 includes tenants, subtenants, if any, named claimants, if any, and  
18 any other occupants of the premises. Thereafter, the plaintiff may  
19 apply to the court for any other relief demanded in the complaint,  
20 including the costs, against the defendant, or defendants, or against  
21 one or more of the defendants.

22 SEC. 14. Section 1986 of the Code of Civil Procedure is  
23 amended to read:

24 1986. (a) A subpoena is obtainable as follows:

25 (1) To require attendance before a court, or at the trial of an  
26 issue therein, or upon the taking of a deposition in an action or  
27 proceeding pending therein, it is obtainable from the clerk of the  
28 court in which the action or proceeding is pending.

29 (2) To require attendance before a commissioner appointed to  
30 take testimony by a court of a foreign country, or of the United  
31 States, or of any other state in the United States, or before any  
32 officer or officers empowered by the laws of the United States to  
33 take testimony, it may be obtained from the clerk of the superior  
34 court of the county in which the witness is to be examined.

35 (3) To require attendance out of court, in cases not provided for  
36 in paragraph (1), before a judge, justice, or other officer authorized  
37 to administer oaths or take testimony in any matter under the laws  
38 of this state, it is obtainable from the judge, justice, or other officer  
39 before whom the attendance is required.

(b) If the subpoena is to require attendance before a court, or at the trial of an issue therein, it is obtainable from the clerk, as of course, upon the application of the party desiring it. If it is obtained to require attendance before a commissioner or other officer upon the taking of a deposition, it must be obtained, as of course, from the clerk of the superior court of the county wherein the attendance is required upon the application of the party requiring it.

SEC. 15. Section 16701 of the Corporations Code is amended to read:

16701. Except as provided in Section 16701.5, all of the following shall apply:

(a) If a partner is dissociated from a partnership, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subdivision (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subdivision (b) of Section 16807 if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership was wound up as of that date. Interest shall be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under Section 16602, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 16702.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subdivision (c).

(f) If a deferred payment is authorized under subdivision (h), the partnership may tender a written offer to pay the amount it

1 estimates to be the buyout price and accrued interest, reduced by  
2 any offsets under subdivision (c), stating the time of payment, the  
3 amount and type of security for payment, and the other terms and  
4 conditions of the obligation.

5 (g) The payment or tender required by subdivision (e) or (f)  
6 shall be accompanied by all of the following:

7 (1) A statement of partnership assets and liabilities as of the  
8 date of dissociation.

9 (2) The latest available partnership balance sheet and income  
10 statement, if any.

11 (3) An explanation of how the estimated amount of the payment  
12 was calculated.

13 (4) Written notice that the payment is in full satisfaction of the  
14 obligation to purchase unless, within 120 days after the written  
15 notice, the dissociated partner commences an action to determine  
16 the buyout price, any offsets under subdivision (c), or other terms  
17 of the obligation to purchase.

18 (h) A partner who wrongfully dissociates before the expiration  
19 of a definite term or the completion of a particular undertaking is  
20 not entitled to payment of any portion of the buyout price until the  
21 expiration of the term or completion of the undertaking, unless the  
22 partner establishes to the satisfaction of the court that earlier  
23 payment will not cause undue hardship to the business of the  
24 partnership. A deferred payment shall be adequately secured and  
25 bear interest.

26 (i) A dissociated partner may maintain an action against the  
27 partnership, pursuant to subparagraph (B) of paragraph (2) of  
28 subdivision (b) of Section 16405, to determine the buyout price  
29 of that partner's interest, any offsets under subdivision (c), or other  
30 terms of the obligation to purchase. The action shall be commenced  
31 within 120 days after the partnership has tendered payment or an  
32 offer to pay or within one year after written demand for payment  
33 if no payment or offer to pay is tendered. The court shall determine  
34 the buyout price of the dissociated partner's interest, any offset  
35 due under subdivision (c), and accrued interest, and enter judgment  
36 for any additional payment or refund. If deferred payment is  
37 authorized under subdivision (h), the court shall also determine  
38 the security for payment and other terms of the obligation to  
39 purchase. The court may assess reasonable attorney's fees and the  
40 fees and expenses of appraisers or other experts for a party to the

1 action, in amounts the court finds equitable, against a party that  
2 the court finds acted arbitrarily, vexatiously, or not in good faith.  
3 The finding may be based on the partnership's failure to tender  
4 payment or an offer to pay or to comply with subdivision (g).

5 SEC. 16. Section 16701.5 of the Corporations Code is amended  
6 to read:

7 16701.5. (a) Section 16701 shall not apply to any dissociation  
8 that occurs within 90 days prior to a dissolution under Section  
9 16801.

10 (b) For dissociations occurring within 90 days prior to the  
11 dissolution, both of the following shall apply:

12 (1) All partners who dissociated within 90 days prior to the  
13 dissolution shall be treated as partners under Section 16807.

14 (2) Any damages for wrongful dissociation under Section 16602  
15 and all other amounts owed by the dissociated partner to the  
16 partnership, whether or not presently due, shall be taken into  
17 account in determining the amount distributable to the dissociated  
18 partner under Section 16807.

19 SEC. 17. Section 16914 of the Corporations Code is amended  
20 to read:

21 16914. (a) When a merger takes effect, all of the following  
22 apply:

23 (1) The separate existence of the disappearing partnerships and  
24 disappearing other business entities ceases and the surviving  
25 partnership or surviving other business entity shall succeed, without  
26 other transfer, act, or deed, to all the rights and property whether  
27 real, personal, or mixed, of each of the disappearing partnerships  
28 and disappearing other business entities and shall be subject to all  
29 the debts and liabilities of each in the same manner as if the  
30 surviving partnership or surviving other business entity had itself  
31 incurred them.

32 (2) All rights of creditors and all liens upon the property of each  
33 of the constituent partnerships and constituent other business  
34 entities shall be preserved unimpaired and may be enforced against  
35 the surviving partnership or the surviving other business entity to  
36 the same extent as if the debt, liability, or duty that gave rise to  
37 that lien had been incurred or contracted by it, provided that those  
38 liens upon the property of a disappearing partnership or  
39 disappearing other business entity shall be limited to the property



1 affected thereby immediately prior to the time the merger is  
2 effective.

3 (3) Any action or proceeding pending by or against any  
4 disappearing partnership or disappearing other business entity may  
5 be prosecuted to judgment, which shall bind the surviving  
6 partnership or surviving other business entity, or the surviving  
7 partnership or surviving other business entity may be proceeded  
8 against or be substituted in the disappearing partnership's or the  
9 disappearing other business entity's place.

10 (b) (1) Unless a certificate of merger has been filed to effect  
11 the merger, the surviving foreign entity shall promptly notify the  
12 Secretary of State of the mailing address of its agent for service  
13 of process and its chief executive office, and of any change of  
14 address. To enforce an obligation of a partnership that has merged  
15 with a foreign partnership or foreign other business entity, the  
16 Secretary of State shall only be the agent for service of process in  
17 an action or proceeding against the surviving foreign partnership  
18 or foreign other business entity if the agent designated for the  
19 service of process for that entity is a natural person and cannot be  
20 located with due diligence or if the agent is a corporation and no  
21 person to whom delivery may be made can be located with due  
22 diligence or if no agent has been designated and if no one of the  
23 officers, partners, managers, members, or agents of the entity can  
24 be located after diligent search, and it is so shown by affidavit to  
25 the satisfaction of the court. The court then may make an order  
26 that service be made by personal delivery to the Secretary of State  
27 or to an assistant or deputy Secretary of State of two copies of the  
28 process together with two copies of the order, and the order shall  
29 set forth an address to which the process shall be sent by the  
30 Secretary of State. Service in this manner is deemed complete on  
31 the 10th day after delivery of the process to the Secretary of State.

32 (2) Upon receipt of the process and order and the fee set forth  
33 in subdivision (c) of Section 12197 of the Government Code, the  
34 Secretary of State shall give notice to the entity of the service of  
35 the process by forwarding by certified mail, return receipt  
36 requested, a copy of the process and order to the address specified  
37 in the order.

38 (3) The Secretary of State shall keep a record of all process  
39 served upon the Secretary of State and shall record therein the time  
40 of service and the Secretary of State's action with respect thereto.

1 The certificate of the Secretary of State, under the Secretary of  
2 State's official seal, certifying to the receipt of process, the giving  
3 of notice thereof to the entity, and the forwarding of the process,  
4 shall be competent and prima facie evidence of the matters stated  
5 therein.

6 (c) A partner of the surviving partnership or surviving limited  
7 partnership, a member of the surviving limited liability company,  
8 a shareholder of the surviving corporation, or a holder of equity  
9 securities of the surviving other business entity, is liable for all of  
10 the following:

11 (1) All obligations of a party to the merger for which that person  
12 was personally liable before the merger.

13 (2) All other obligations of the surviving entity incurred before  
14 the merger by a party to the merger, but those obligations may be  
15 satisfied only out of property of the entity.

16 (3) All obligations of the surviving entity incurred after the  
17 merger takes effect, but those obligations may be satisfied only  
18 out of property of the entity if that person is a limited partner, a  
19 shareholder in a corporation, or, unless expressly provided  
20 otherwise in the articles of organization or other constituent  
21 documents, a member of a limited liability company or a holder  
22 of equity securities in a surviving other business entity.

23 (d) If the obligations incurred before the merger by a party to  
24 the merger are not satisfied out of the property of the surviving  
25 partnership or surviving other business entity, the general partners  
26 of that party immediately before the effective date of the merger,  
27 to the extent that party was a partnership or a limited partnership,  
28 shall contribute the amount necessary to satisfy that party's  
29 obligations to the surviving entity in the manner provided in  
30 Section 16807 or in the limited partnership act of the jurisdiction  
31 in which the party was formed, as the case may be, as if the merged  
32 party were dissolved.

33 (e) A partner of a domestic disappearing partnership who does  
34 not vote in favor of the merger and does not agree to become a  
35 partner, member, shareholder, or holder of interest or equity  
36 securities of the surviving partnership or surviving other business  
37 entity shall have the right to dissociate from the partnership as of  
38 the date the merger takes effect. Within 10 days after the approval  
39 of the merger by the partners as required under this article, each  
40 domestic disappearing partnership shall send notice of the approval

1 of the merger to each partner that has not approved the merger,  
2 accompanied by a copy of Section 16701 and a brief description  
3 of the procedure to be followed under that section if the partner  
4 wishes to dissociate from the partnership. A partner that desires  
5 to dissociate from a disappearing partnership shall send written  
6 notice of that dissociation within 30 days after the date of the notice  
7 of the approval of the merger. The disappearing partnership shall  
8 cause the partner's interest in the entity to be purchased under  
9 Section 16701. The surviving entity is bound under Section 16702  
10 by an act of a general partner dissociated under this subdivision,  
11 and the partner is liable under Section 16703 for transactions  
12 entered into by the surviving entity after the merger takes effect.  
13 The dissociation of a partner in connection with a merger pursuant  
14 to the terms of this subdivision shall not be deemed a wrongful  
15 dissociation under Section 16602.

16 SEC. 18. Section 17595 of the Education Code is amended to  
17 read:

18 17595. Nothing in this code shall preclude the governing board  
19 of any school district from purchasing materials, equipment, or  
20 supplies through the Department of General Services pursuant to  
21 subdivision (b) of Section 10299 of the Public Contract Code.

22 SEC. 19. Section 43040.5 of the Education Code is repealed.

23 SEC. 20. Section 43060 of the Education Code is repealed.

24 SEC. 21. Section 8610.7 of the Fish and Game Code is  
25 repealed.

26 SEC. 22. Section 8610.8 of the Fish and Game Code is  
27 repealed.

28 SEC. 23. Section 8610.13 of the Fish and Game Code is  
29 amended to read:

30 8610.13. The penalty for a violation of Section 8610.3 or  
31 ~~8610.4 is~~

32 ~~as specified in Section 12003.5. 8610.4 is as specified in Section~~  
33 ~~12003.5.~~

34 SEC. 24. Section 12003.5 of the Fish and Game Code is  
35 amended to read:

36 12003.5. (a) The penalty for a first violation of Section 8610.3  
37 or 8610.4 is a fine of not less than one thousand dollars (\$1,000)  
38 and not more than five thousand dollars (\$5,000) and a mandatory  
39 suspension of any license, permit, or stamp to take, receive,  
40 transport, purchase, sell, barter, or process fish for commercial

purposes for six months. The penalty for a second or subsequent violation of Section 8610.3 or 8610.4 is a fine of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for one year.

{

(b) If a person convicted of a violation of Section 8610.3 or 8610.4, is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, a requirement that the person pay at least the minimum fine prescribed in this section.

SEC. 25. Section 7910 of the Government Code is amended to read:

7910. (a) Each year the governing body of each local jurisdiction shall, by resolution, establish its appropriations limit and make other necessary determinations for the following fiscal year pursuant to Article XIII B of the California Constitution at a regularly scheduled meeting or noticed special meeting. Fifteen days prior to the meeting documentation used in the determination of the appropriations limit and other necessary determinations shall be available to the public. The determinations made pursuant to this section are legislative acts.

(b) A judicial action or proceeding to attack, review, set aside, void, or annul the action of the governing body taken pursuant to this section shall be commenced within 45 days of the effective date of the resolution.

(c) A court in which an action described in subdivision (b) is pending, including any court reviewing the action on appeal from the decision of a lower court, shall give the action preference over all other civil actions, in the manner of setting the action for hearing or trial and in hearing the action, to the end that the action shall be quickly heard and determined.

SEC. 26. Section 26801 of the Government Code is amended to read:

26801. Except as otherwise provided by law, the county clerk shall act as clerk of the board of supervisors in the county.

SEC. 27. Section 1196 of the Penal Code is amended to read:

1196. (a) The clerk must, at any time after the order, issue a bench warrant into one or more counties.

1 (b) The clerk shall require the appropriate agency to enter each  
2 bench warrant issued on a private surety-bonded felony case into  
3 the national warrant system (National Crime Information Center  
4 (NCIC)). If the appropriate agency fails to enter the bench warrant  
5 into the national warrant system (NCIC), and the court finds that  
6 this failure prevented the surety or bond agent from surrendering  
7 the fugitive into custody, prevented the fugitive from being arrested  
8 or taken into custody, or resulted in the fugitive's subsequent  
9 release from custody, the court having jurisdiction over the bail  
10 shall, upon petition, set aside the forfeiture of the bond and declare  
11 all liability on the bail bond to be exonerated.

12 SEC. 28. Section 1207 of the Penal Code is amended to read:

13 1207. When judgment upon a conviction is rendered, the clerk  
14 must enter the judgment in the minutes, stating briefly the offense  
15 for which the conviction was had, and the fact of a prior conviction,  
16 if any. A copy of the judgment of conviction shall be filed with  
17 the papers in the case.

18 SEC. 29. Section 1213 of the Penal Code is amended to read:

19 1213. (a) When a probationary order or a judgment, other than  
20 of death, has been pronounced, a copy of the entry of that portion  
21 of the probationary order ordering the defendant confined in a city  
22 or county jail as a condition of probation, or a copy of the entry  
23 of the judgment, or, if the judgment is for imprisonment in the  
24 state prison, either a copy of the minute order or an abstract of the  
25 judgment as provided in Section 1213.5, certified by the clerk of  
26 the court, and a Criminal Investigation and Identification (CII)  
27 number shall be forthwith furnished to the officer whose duty it  
28 is to execute the probationary order or judgment, and no other  
29 warrant or authority is necessary to justify or require its execution.

30 (b) If a copy of the minute order is used as the commitment  
31 document, the first page or pages shall be identical in form and  
32 content to that prescribed by the Judicial Council for an abstract  
33 of judgment, and other matters as appropriate may be added  
34 thereafter.

35 SEC. 30. Section 1326 of the Penal Code is amended to read:

36 1326. (a) The process by which the attendance of a witness  
37 before a court or magistrate is required is a subpoena. It may be  
38 signed and issued by any of the following:

1 (1) A magistrate before whom a complaint is laid or his or her  
2 clerk, the district attorney or his or her investigator, or the public  
3 defender or his or her investigator, for witnesses in the state.

4 (2) The district attorney, his or her investigator, or, upon request  
5 of the grand jury, any judge of the superior court, for witnesses in  
6 the state, in support of an indictment or information, to appear  
7 before the court in which it is to be tried.

8 (3) The district attorney or his or her investigator, the public  
9 defender or his or her investigator, or the clerk of the court in which  
10 a criminal action is to be tried. The clerk shall, at any time, upon  
11 application of the defendant, and without charge, issue as many  
12 blank subpoenas, subscribed by him or her, for witnesses in the  
13 state, as the defendant may require.

14 (4) The attorney of record for the defendant.

15 (b) A subpoena issued in a criminal action that commands the  
16 custodian of records or other qualified witness of a business to  
17 produce books, papers, documents, or records shall direct that  
18 those items be delivered by the custodian or qualified witness in  
19 the manner specified in subdivision (b) of Section 1560 of the  
20 Evidence Code. Subdivision (e) of Section 1560 of the Evidence  
21 Code shall not apply to criminal cases.

22 (c) In a criminal action, no party, or attorney or representative  
23 of a party, may issue a subpoena commanding the custodian of  
24 records or other qualified witness of a business to provide books,  
25 papers, documents, or records, or copies thereof, relating to a  
26 person or entity other than the subpoenaed person or entity in any  
27 manner other than that specified in subdivision (b) of Section 1560  
28 of the Evidence Code. When a defendant has issued a subpoena  
29 to a person or entity that is not a party for the production of books,  
30 papers, documents, or records, or copies thereof, the court may  
31 order an in camera hearing to determine whether or not the defense  
32 is entitled to receive the documents. The court may not order the  
33 documents disclosed to the prosecution except as required by  
34 Section 1054.3.

35 (d) This section shall not be construed to prohibit obtaining  
36 books, papers, documents, or records with the consent of the person  
37 to whom the books, papers, documents, or records relate.

38 SEC. 31. Section 1803.3 of the Vehicle Code is amended to  
39 read:

1 1803.3. (a) The clerk of any court that reverses a conviction  
2 for an offense described in subdivision (a) of Section 1803, which  
3 is not exempted under subdivision (b) of that section, shall prepare  
4 and forward to the department at its office in Sacramento an  
5 abstract of the record of the court covering the case in which the  
6 conviction was reversed. In addition, if a court dismisses a charge  
7 of a violation of Section 40508 for which a notice was given to  
8 the department pursuant to Section 40509 or 40509.5, the court  
9 shall notify the department of the dismissal.

10 (b) The abstract shall be forwarded within 30 days of the date  
11 the judgment of reversal becomes final. The notice of dismissal  
12 shall be given to the department not later than 30 days after the  
13 dismissal. Within 30 days of receiving the abstract or notice, the  
14 department shall remove any record of that conviction, or notice  
15 received pursuant to Section 40509 or 40509.5, from the driver's  
16 record.

17 (c) As used in this section, "reverse" includes any action by  
18 which a conviction is nullified or set aside.

19 SEC. 32. Section 23140 of the Vehicle Code is amended to  
20 read:

21 23140. (a) It is unlawful for a person under the age of 21 years  
22 who has 0.05 percent or more, by weight, of alcohol in his or her  
23 blood to drive a vehicle.

24 (b) A person may be found to be in violation of subdivision (a)  
25 if the person was, at the time of driving, under the age of 21 years  
26 and under the influence of, or affected by, an alcoholic beverage  
27 regardless of whether a chemical test was made to determine that  
28 person's blood-alcohol concentration and if the trier of fact finds  
29 that the person had consumed an alcoholic beverage and was  
30 driving a vehicle while having a concentration of 0.05 percent or  
31 more, by weight, of alcohol in his or her blood.

32 (c) Notwithstanding any provision of law to the contrary, upon  
33 a finding that a person has violated this section, the clerk of the  
34 court shall prepare within 10 days after the finding and immediately  
35 forward to the department an abstract of the record of the court in  
36 which the finding is made. That abstract shall be a public record  
37 and available for public inspection in the same manner as other  
38 records reported under Section 1803.

39 SEC. 33. Section 23229.1 of the Vehicle Code is amended to  
40 read:

1 23229.1. (a) Subject to subdivision (b), Sections 23223 and  
2 23225 apply to any charter-party carrier of passengers, as defined  
3 in Section 5360 of the Public Utilities Code, operating a limousine  
4 for hire when the driver of the vehicle transports any passenger  
5 under the age of 21.

6 (b) For purposes of subdivision (a), it is not a violation of  
7 Section 23225 for any charter-party carrier of passengers operating  
8 a limousine for hire that is licensed pursuant to the Public Utilities  
9 Code to keep any bottle, can, or other receptacle containing any  
10 alcoholic beverage in a locked utility compartment within the area  
11 occupied by the driver and passengers.

12 (c) In addition to the requirements of Section 1803, every clerk  
13 of a court in which any driver in subdivision (a) was convicted of  
14 a violation of Section 23225 shall prepare within 10 days after  
15 conviction, and immediately forward to the Public Utilities  
16 Commission at its office in San Francisco, an abstract of the record  
17 of the court covering the case in which the person was convicted.  
18 If sentencing is not pronounced in conjunction with the conviction,  
19 the abstract shall be forwarded to the commission within 10 days  
20 after sentencing, and the abstract shall be certified, by the person  
21 required to prepare it, to be true and correct. For the purposes of  
22 this subdivision, a forfeiture of bail is equivalent to a conviction.

23 *SEC. 34. Section 9.5 of this bill shall only become operative*  
24 *if (1) this bill and SB 649 are both enacted and become effective*  
25 *on or before January 1, 2008, and (2) SB 649 adds Section 904.3*  
26 *of the Code of Civil Procedure Code, in which case Section 9 of*  
27 *this bill shall not become operative.*